

CALIFORNIA ENERGY COMMISSION

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**STATE OF CALIFORNIA**

Energy Resources Conservation
and Development Commission

In the Matter of:)	
)	Docket No. 98-SIT-2
Blythe Energy, LLC)	
Petition for Jurisdictional Determination)	Dissenting Opinion of
)	Commissioner Michal C. Moore

On October 21, 1998, the California Energy Commission's Energy Facility Siting Committee (Committee) issued its Proposed Decision on the above matter. This Proposed Decision, in my opinion, still fails to answer the fundamental question before each of us. Namely, how can we employ a standard that broadly addresses the relative location-based implications of a proposed site? For this reason, I believe the Committee recommends the wrong policy decision, although I understand the Committee's view that it is acting in a manner consistent with standing Commission policy. I believe the Commission has the discretion to reject the Committee's recommended interpretation of that policy.

The Committee has taken care to address some of the concerns I raised in a previous dissent, but the essence of my discomfort with the process remains. The Committee suggests, in the end, that we should continue a process of case-by-case review. Yet if the Commission adopts the proposed decision, this review would be in name only, since the decision is expected to be "precedent" setting and still finds the question of relative locational preference (and the corollary assignment of rank or timing) elusive.

Until we address this issue, preferably with a replacement for the Notice of Intent (NOI) process, I cannot support effectively abandoning the existing tool. My specific comments follow:

1. The Committee relies on language in the Commission's **1994 Electricity Report** (ER 94) and **1996 Electricity Report** (ER 96) to support the waiver for an NOI review. This language was crafted at a time when monopoly regulation of utilities was still in force, and when, for all practical purposes, the location and frequency of power plant applications were a function of regulated utilities' plans. There are several serious

flaws in the limited language cited in these reports regarding the Commission's role and responsibility in the siting of new power plants. I believe the flaws would have existed whether the market was deregulated or not. These include:

a. The intended waiver for gas-fired power plants seems to imply that such facilities are so much cleaner than any other conventional alternative that they should be practically immune from historic review of their relative locational merits. In effect, we say that these power plants are preferable to any other source and should be automatically granted preferential treatment. If this is true, why go through the effort of a reflective impact analysis? Should other alternative designs receive such preferential treatment?

Gas-fired facilities continue to create emissions, noise and other forms of pollution, as well as relatively permanent changes to the site's appearance and land use. In a relative sense, these externalities are diminished in most cases from previous generating facilities, but they are not free from all negative effects. As a practical matter, since only gas-fired power plants are being proposed, why expend the effort on an NOI-exemption review, given that the outcome is preordained?

b. The language seems to imply that new generators were maligned in the BRPU process, and that we need to make amends. Therefore, we create the surrogate of a "competitive bid" circumstance by declaring sales in the PX to constitute such an event and pronounce a winner. For reasons cited below (see 3 below), I believe this provides, at best, a cursory and topical review of what the original "bid" language intended. Additionally, the BRPU was a short-lived and now historical event. The competitive-bid process *it* intended has no more relevance in today's marketplace than the term "monopoly generation" does. We owe no residual debt to firms that failed to qualify in the BRPU process.

2. The informal consensus seems to be that the time required for completion of an NOI review, as much as a year, is effectively punitive. The Committee maintains a process this long is unnecessary since the function of an NOI is satisfied by language in AB 1884 and through the CEQA process that requires us to analyze alternative sites and their impacts.

In general, CEQA demands any project which is significant enough to merit an EIR to go through an alternatives analysis. However—and the critical difference is this—CEQA analysis is based on some established datum such as a land-use plan or public-improvement plan that can be used to weigh the relative benefits and costs from such a proposal.

Having a merchant power plant developer declare its intention to build, and its intention to sell into the Power Exchange, does not imply or indicate such a datum. How can the approval of any given power plant achieve such goals as, for example, system integrity, voltage support, regional distribution, region-wide retirement of inefficient power plants, or diminished line congestion? Further, once we have

established such goals, how can we communicate them to market participants, thus improving their performance?

Without this datum, the only other tool available today is to thoughtfully review power plant applications in the context of current *system* conditions before submittal of a final plan that effectively settles on one location and generates an impact analysis based on that single location. Given a practical time limit of one year, seriously evaluating alternative sites, their associated impacts on the system as well as local communities, settling on a single location, and then performing a complete impact analysis of that location is difficult, at best. For instance, local government land-use EIRs demand roughly 18 months to complete including hearings even with the datum of the land-use plan for analysis.

3. Using the PX process as a competitive “solicitation” is stretching the current Commission policy too far. The public is not soliciting generation bids. We are reviewing them. Other forms of competition exist in parallel with this, including direct-access sales, sales out of state, sales to other power exchanges, or RMR or spinning reserve arrangements with the ISO. Are we “soliciting” them as well. Further, calling the PX an “organized pool” of consumers is a reach. The PX is an exchange, operating on a not-for-profit basis. Further, it doesn’t technically have to exist, since other states have shown the ISO can handle bids as well as dispatch. The Power Exchange is a surrogate for the market where people can bid their products, it has nothing to do with the what the BRPU intended when it imagined competitive solicitations based on a projected need cap or regional locational gaps.

4. If the “bid” language of ER 94 and ER 96 was important at the time, but really doesn’t fit today, then review it, and issue an addendum or a new ER. Revising history to fit current circumstances is inefficient and confusing. The result, as I have pointed out previously, is a process where directions for applicants are unclear, tools for decision-makers are incomplete, and where ad-hoc and inconsistent decisions are the probable outcome.

5. The ten questions in the Proposed Decision are self-serving and, at best, incomplete. They do not reveal new information, they ratify intent. We should be conducting a critical review of power plant characteristics in a locational context. There is nothing in this list, however, that does more than ask the applicant if they can verify they looked at other sites with good intentions.

In sum, the proposed decision takes us no closer to the effective tool we need for locational decisions than before. Setting the precedent that we will review matters on a case-by-case basis is a little like saying we will decide it is daylight when we see the sun come up. The standard cited is not a standard, it is a convention. If the NOI process is irrelevant, then let us seek out legislative intent or authority that is relevant, rather than continue to establish precedent which will further restrict future decision-making latitude.

DATED: _____

MICHAL C. MOORE
Commissioner